



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201124024**
Release Date: 6/17/2011

Date: March 24, 2011

Contact Person:

Identification Number:

Telephone Number:

Uniform Issue List:
509.02-02

Employer Identification Number:

Legend:

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Dear :

This is in response to your request for a ruling dated August 13, 2009 which concerns your status as an organization described in section 509(a)(3) of the Internal Revenue Code ("Code").

You are exempt under section 501(a) of the Code as an organization described in section 501(c)(3) and are classified as a Type 1 supporting organization under section 509(a)(3).

Article III.1 of your Articles of Incorporation provide that you were formed to serve organizations that are committed to enhancing and improving (a) the character of, the quality of, and access to education, (b) the personal, social, and intellectual development of children and youth, or (c) the educational and social quality of community life. More specifically, you were formed to support and benefit the organizations specified by name at Article III.2 of your Articles. Each organization has been recognized as described in section 501(c)(3) of the Code and classified as a publicly supported organization described in either section 509(a)(1) or (2).

You were established and funded by B. B died on y. His estate is worth over \$x, the majority of which will ultimately go to you likely in the form of C stock.

Article III of your bylaws provides that your business and affairs are managed and controlled by your seven member board of directors. Four of your seven directors are appointed by "Appointing Charitable Organizations". Your bylaws define Appointing Charitable Organizations as those supported organizations having the power to appoint a member of your board of directors. Each of the Appointing Charitable Organizations selects one member of your seven member governing board. B's children select two members and the directors of C select the remaining member. Your bylaws provide that: 1) a majority of the voting power of your governing board shall at all times be held by directors appointed by persons who are not disqualified persons; 2) a majority of the voting power shall at all times be held by persons who are not disqualified persons, and 3) the Appointing Charitable Organizations shall not appoint a disqualified person as a director. Your bylaws define "Disqualified Persons" as those persons who are (a) defined as such in section 4946 of the Code, (b) controlled or otherwise influenced by Disqualified Persons, or (c) employees of C or any related or subsidiary corporation of C, but shall not include any person who is a disqualified person within the meaning of section 4946 solely by reason of being a "foundation manager" within the meaning of section 4946(b).

You have designated four organizations as Appointing Charitable Organizations. The four organizations consist of two universities, a college and an organization formed to promote education in the arts. Each of these entities is located in Southeastern D.

You represent that you are not controlled by disqualified persons described in section 4946 of the Code.

In view of the projected increase in your endowment, you plan to increase the number of organizations you will support. Rather than specifying the supported organizations by name in your Articles, you would like to specify the organizations by class or purpose. To accomplish this, you propose amending your Articles to delete the language which currently appears at Article III.2 and substitute with the following language (Proposed Amendment 1"):

"The corporation is organized, and shall at all times be operated, exclusively for the benefit of, to carry out the purposes of, or to perform the functions of one or more of the following organizations (hereinafter collectively referred to as, the "Supported Organizations"):

- (a) exempt organizations described in I.R.C. § 170(b)(1)(A)(ii) and which have their principal place of instruction in Southeastern D (defined for purposes of these Articles of Incorporation to be comprised of the following 11 counties: E, F, G, H, I, J, K, L, M, N, and O);
- (b) exempt organizations described in I.R.C. § 509(a)(1) & (2) and which are organized and operated for the purpose of providing and/or improving educational opportunities for children and youth in Southeastern D.
- (c) exempt organizations described in I.R.C. § 170(b)(1)(A)(vi) and which (i) are organized under D law, (ii) identify themselves by name as D regional community foundations, and (iii) have their principal place of operations located in Southeastern D."

Further, you proposed adding the following to Article III.3 of your Articles of Incorporation ("Proposed Amendment 2"):

"In carrying out such activities, the corporation shall be permitted to do any or all of the following:

- (a) substitute one Supported Organizations within one of the classes designated in Article III.2, above, for another Supported Organization, either in the same or a different such designated class;
- (b) operate for the benefit of new or additional Supported Organizations of the same or a different class designated in Article III.2, above; and
- (c) vary the amount of its support among different Supported Organizations within the class or classes of organizations designated in Article III.2, above."

You request the following rulings:

1. The proposed amendment to your Articles of Incorporation deleting Article III.2 and substituting the language referred to above which identifies the organizations you will support by class or purpose rather than by name will not adversely affect your status as a Type 1 supporting organization under section 509(a)(3) of the Code.
2. The proposed amendment to your Articles of Incorporation adding the language which appears at section 1.509(a)-4(d)(3) of the Income Tax Regulations will not adversely affect your status as a Type 1 supporting organization under section 509(a)(3) of the Code.

Law:

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific, or educational

purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 509(a) of the Code provides that the term "private foundation" means a domestic or foreign organization that is described in section 501(c)(3) other than organizations described in section 509(a)(1) through 509(a)(4).

Section 509(a)(3)(A) of the Code provides that a supporting organization must be organized and at all times thereafter be operated, exclusively for the benefit of, to perform the function of, or to carry out the purposes of one or more supported organizations.

Section 1.509(a)-4(c)(1) of the Income Tax Regulations provides that an organization is organized exclusively for one or more of the purposes specified in section 509(a)(3)(A) of the Code only if its articles of incorporation:

- (i) Limit the purposes of such organization to one or more of the purposes set forth in section 509(a)(3)(A);
- (ii) Do not expressly empower the organization to engage in activities which are not in furtherance of the purposes referred to in subdivision (i) of this subparagraph;
- (iii) State the specified publicly supported organizations on whose behalf such organization is to be operated (within the meaning of paragraph (d) of this section); and
- (iv) Do not expressly empower the organization to operate to support or benefit any organization other than the specified publicly supported organizations referred to in subdivision (iii) of this subparagraph.

Section 1.509(a)-4(d)(1) of the regulations provides that in order to meet the requirements of section 509(a)(3)(A) of the Code, an organization must be organized and operated exclusively to support or benefit one or more "specified" publicly supported organizations. The manner in which the publicly supported organizations must be "specified" in the article of organization for purposes of section 509(a)(3)(A) will depend upon whether the supporting organization is "operated, supervised, or controlled by" or "supervised or controlled in connection with" such organizations or whether it is "operated in connection with" such organizations.

Section 1.509(a)-4(d)(2)(i) of the regulations provides that the articles of organization of the supporting organization must designate each of the "specified" organizations by name unless:

- (a) The supporting organization is operated, supervised, or controlled by (within the meaning of paragraph (g) of this section), or is supervised or controlled in connection with (within the meaning of paragraph (h) of this section) one or more publicly supported organizations; and

(b) The articles of organization of the supporting organization require that it be operated to support or benefit one or more beneficiary organizations which are designated by class or purpose and which include:

- (1) The publicly supported organizations referred to in (a) of this subdivision (without designating such organizations by name); or
- (2) Publicly supported organizations which are closely related in purpose or function to those publicly supported organizations referred to in subdivision (i)(a) or this subparagraph (without designating such organization by name.).

Section 1.509(a)-4(d)(2)(ii) of the regulations provides that if a supporting organization is described in subdivision (i)(a) of this subparagraph, it will not be considered as failing to meet the requirements of subparagraph (1) of this paragraph that the publicly supported organizations be specified merely because its articles of organization permit the conditions described in subparagraphs (3)(i), (ii), and (iii) and (4)(i)(a) and (b) of this paragraph.

Section 1.509(a)-4(d)(3) of the regulations provide that if the requirements of subparagraph (2)(i)(a) of this paragraph are met, a supporting organization will not be considered as failing the test of being organized for the benefit of "specified" organizations solely because its articles:

- (i) Permit the substitution of one publicly supported organization within a designated class for another publicly supported organization either in the same or a different class designated in the articles;
- (ii) Permit the supporting organization to operate for the benefit of new or additional publicly supported organizations of the same or a different class designated in the articles; or
- (iii) Permit the supporting organization to vary the amount of its support among different publicly supported organizations within the class or classes of organizations designated by the articles.

Analysis:

Ruling 1: The proposed amendment to your Articles of Incorporation deleting Article III.2 and substituting the language referred to above which identifies the organizations you will support by class or purpose rather than by name will not adversely affect your status as a Type 1 supporting organization under section 509(a)(3) of the Code.

You currently meet the organizational test described at section 509(a)(3)(A) of the Code. Article III.2 of your Articles identifies the organizations you support by name. However, since you are operated, supervised, or controlled by four of the organizations you were formed to support, section 1.509(a)-4(d)(2)(i) provides that you may specify the supported organizations by class or

purpose so long as the requirements of section 1.509(a)-4(d)(2)(i)(b)(1) or (2) of that section are met.

Sections 1.509(a)-4(d)(2)(i)(b)(1) and (2) of the regulations provide that the organizations described by class or purpose must include the publicly supported organizations which control the supporting organization (without designating such organizations by name) or publicly supported organizations which are closely related in purpose or function to those publicly supported organizations (without designating such organizations by name).

You propose amending your Articles of Incorporation to delete Article III.2 which identifies by name the organizations you were formed to support. You will replace the language currently in Article III.2 with the following language:

"The corporation is organized, and shall at all times be operated, exclusively for the benefit of, to carry out the purposes of, or to perform the functions of one or more of the following organizations (hereinafter collectively referred to as, the "Supported Organizations"):

- (a) exempt organizations described in I.R.C. § 170(b)(1)(A)(ii) and which have their principal place of instruction in Southeastern D (defined for purposes of these Articles of Incorporation to be comprised of the following 11 counties: E, F, G, H, I, J, K, L, M, N, and O);
- (b) exempt organizations described in I.R.C. § 509(a)(1) & (2) and which are organized and operated for the purpose of providing and/or improving educational opportunities for children and youth in Southeastern D.
- (c) exempt organizations described in I.R.C. § 170(b)(1)(A)(vi) and which (i) are organized under D law, (ii) identify themselves by name as D regional community foundations, and (iii) have their principal place of operations located in Southeastern D."

Proposed Amendment 1 provides that the organizations you will support are publicly supported organizations located in Southeastern D which further or improve education or further the arts. The organizations specified by class or purpose in Proposed Amendment 1 include the Appointing Charitable Organizations, without specifying those organizations by name, as well as organizations closely related in purpose to the Appointing Charitable Organizations, without specifying those organizations by name. Thus, the requirements of section 1.509(a)-4(d)(2)(i)(b) of the regulations are met.

Since you are operated, supervised, or controlled by the Appointing Charitable Organizations and you satisfy the requirements of section 1.509(a)-4(d)(1)(b), after making Proposed Amendment 1, you will continue to meet the organizational test described at section 509(a)(3)(A) of the Code.

Ruling 2: The proposed amendment to your Articles of Incorporation adding the language which appears at section 1.509(a)-4(d)(3) of the Income Tax Regulations will not adversely affect your status as a Type 1 supporting organization under section 509(a)(3) of the Code.

Section 1.509(a)-4(d)(3) of the regulations provides that if the requirements of section 1.509(a)-4(d)(2)(i)(a) are met, a supporting organization will not be considered as failing the test of being organized for the benefit of "specified" organizations solely because its articles:

- (iv) Permit the substitution of one publicly supported organization within a designated class for another publicly supported organization either in the same or a different class designated in the articles;
- (v) Permit the supporting organization to operate for the benefit of new or additional publicly supported organizations of the same or a different class designated in the articles; or
- (vi) Permit the supporting organization to vary the amount of its support among different publicly supported organizations within the class or classes of organizations designated by the articles.

As an organization which is operated, supervised, or controlled by one or more of the publicly supported organizations you were formed to support, you met the requirements of section 1.509(a)-4(d)(2)(i)(a) of the regulations. Proposed Amendment 2 to your Articles of Incorporation merely tracks the language which appears in section 1.509(a)-4(d)(3) of the regulations. Thus, since inclusion of this language in your Articles is permitted by the regulations, after making Proposed Amendment 2, you will continue to meet the organizational test described at section 509(a)(3)(A) of the Code.

Ruling:

1. The proposed amendment to your Articles of Incorporation deleting Article III.2 and substituting the language referred to above which identifies the organizations you will support by class or purpose rather than by name will not adversely affect your status as a Type 1 supporting organization under section 509(a)(3) of the Code.
2. The proposed amendment to your Articles of Incorporation adding the language which appears at section 1.509(a)-4(d)(3) of the regulations will not adversely affect your status as a Type 1 supporting organization under section 509(a)(3) of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

We express no opinion as to the tax consequences of the proposed transaction under any other section of the Code.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative. A copy of this letter should be kept in its permanent records.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

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